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No. 07-701

Supreme Court, U.S.
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In The Supreme Court of the United States

STEVEN MACARTHUR, et al.,

Petitioners,

v.

SAN JUAN COUNTY, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS SAN JUAN HEALTH SERVICES DISTRICT, PAST AND PRESENT MEMBERS OF THE BOARD OF TRUSTEES, REID WOOD AND LAUREN SCHAFER

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QUESTION PRESENTED FOR REVIEW

Whether the court of appeals properly held that, with one exception, the Navajo tribal court lacked jurisdiction over respondents and, on that ground and others, properly affirmed the district court's dismissal of petitioners' claim seeking to enforce certain preliminary orders of the Navajo tribal court.

PARTIES TO THE PROCEEDING

Petitioners

Petitioners Fred Riggs, Donna Singer and Alison Dickson are plaintiffs below and were plaintiffs in the action before the Navajo tribal court.

Respondents

Respondents San Juan Health Services District, past and present members of the Health District Board of Trustees, including but not limited to Karen Adams, Roger Atcitty, Patsy Shumway and John Lewis, and Reid Wood and Lauren Schafer (collectively called "respondents" or "Health District respondents") are defendants below and were defendants in the action before the Navajo tribal court.

Additional Parties in this Court

San Juan County, J. Tyron Lewis, Lynn Stevens, Manuel Morgan, Bill Redd, Rick Bailey and Craig Halls (collectively "San Juan County respondents") are additional respondents and defendants below and were defendants in the action before the Navajo tribal court.

PARTIES TO THE PROCEEDING – Continued

Additional Parties Below

Dr. Steven MacArthur, Michele Lyman and Helen Valdez were additional plaintiffs below, but were not parties in the Navajo tribal court and are not parties to the petition for certiorari.

Cleal Bradford, John Housekeeper, Gary Holliday, Dr. James Redd, Dr. Val Jones, Dr. Manfred Nelson, Marilee Bailey, Ora Lee Black, Laurie Wallace, Carla Grimshaw, Gloria Yanito and Julie Bronson were additional defendants below but were not parties in the Navajo tribal court.

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OPINIONS BELOW

The October 2005 decision of the United States District Court for the District of Utah, Central Division, is reported at *MacArthur, et al. v. San Juan County, et al.*, 391 F. Supp. 2d 895 (D. Utah 2005) ("*MacArthur I*"), and is reprinted at P. App. 40a-427a. The July 18, 2007 decision of the United States Court of Appeals for the Tenth Circuit is reported at *MacArthur, et al. v. San Juan County, et al.*, 497 F.3d 1057 (10th Cir. 2007) ("*MacArthur II*"), and is reprinted at P. App. 1a-39a.

BASIS FOR JURISDICTION

The court of appeals entered its decision on July 18, 2007, and denied petitioners' petition for panel rehearing and petition for rehearing en banc on August 14, 2007. Petitioners Singer, Riggs and Dickson filed the petition for writ of certiorari on November 13, 2007, and the petition was placed on the docket on November 27, 2007. Pursuant to Supreme Court Rule 15.3, respondents file this Brief in Opposition to the petition for writ of certiorari within thirty days of November 27, 2007.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

COUNTERSTATEMENT OF THE CASE

Petitioner Singer is a non-Indian spouse of a member of the Navajo Tribe who lives outside the Navajo reservation. Singer was employed by the San Juan Health Services District ("Health District") at its Montezuma Creek Clinic from 1995 until she was terminated in late-1998. *MacArthur II,* 497 F.3d at 1061; P. App. at 4a-5a. Petitioners Riggs and Dickson are enrolled members of the Navajo Tribe who reside within Navajo Reservation boundaries. During relevant periods, Riggs and Dickson were employed by the Health District at the Montezuma Creek Clinic, and they remained employed at the Clinic until the Health District ceased operating the clinic effective January 1, 2000. *Id.* at 1061-62; P. App. at 5a-6a.

Respondent Health District is a special service district organized by San Juan County pursuant to Utah Code Ann. § 17A-2-1204. During the period relevant to this appeal, along with several other facilities, the Health District operated the Montezuma Creek Clinic. *Id.* at 1061; P. App. at 4a. Although located within the exterior boundaries of the Navajo reservation in Southern Utah, the Clinic is located on fee land owned by the State of Utah as part of the Navajo Trust Fund. *Id.* The Health District ceased operation of the Clinic as of January 1, 2000.[1] The individual Health District respondents

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[1] Utah Navajo Health Systems ("UNHS"), an entity affiliated with the Navajo Tribe, took over operation of the Clinic as

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were employees or members of the Health District board of trustees during relevant periods. *Id.*

Petitioners brought suit against the Health District, San Juan County and certain Health District and County officials and employees in Navajo tribal court in 1999, alleging various civil rights claims under federal, Navajo and international law. Petitioners also brought various state law tort claims. *Id.* at 1062; P. App. at 7a. Petitioners' claims primarily arose out of their employment with the Health District, or in the case of Singer, the termination of that employment, but petitioners also purported to bring broad claims on behalf of unnamed Navajo parties relating to the health care services provided at the Clinic. *Id.* Petitioners sought preliminary injunctive relief from the tribal court, and the Navajo tribal court entered several interlocutory orders providing wide-ranging injunctive and unliquidated monetary relief, beginning with a December 28, 1999 Findings, Opinion and Judgment, and continuing with additional orders entered in March 2000. *Id.* at 1062-63; P. App. at 7a-9a; 453a-509a. For example, the orders essentially placed the operation of the Clinic in the hands of the Tribal Court; ordered respondents to reinstate petitioner Singer as an employee; and, without specifying any particular amount, ordered respondents to pay petitioners' back-pay,

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of January 1, 2000. *Id.* at 1061-62; P. App. at 4a-7a. Appellants have been employed by UNHS at the Clinic since that time. *Id.*

benefits and attorneys fees. Notwithstanding the interlocutory and unliquidated nature of the orders, the tribal court also imposed a fine of $10,000 per day for each day the orders were not carried out in their entirety, and it ordered that "every personal defendant and defendants [sic] counsel will pay $1000 per day of the $10,000 daily fine from their own personal assets." *Id.* at 1062-63; P. App. at 8a. At the time of this order, the Health District no longer operated the Clinic and had no control over its operations. In a March 2, 2000 order, the tribal court gave petitioners "leave to sue in the Utah federal court" to enforce the orders. *Id.* at 1063; P. App. at 9a.

Pursuant to the tribal court's invitation, in July 2000, petitioners commenced an action in the United States District Court for the District of Utah seeking enforcement of the interlocutory orders entered by the tribal court against San Juan County, the Health District and the individual employees and officials sued in tribal court. In late 2000, shortly after the action was filed, the district court dismissed petitioners' claims on the ground that respondents were immune from suit in tribal court. On appeal, the court of appeals vacated the dismissal with respect to the Health District and County respondents and remanded the case with instructions for the district court to review the tribal court's jurisdiction before addressing the issue of immunity.[2] On remand, the

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[2] *MacArthur v. San Juan County*, 309 F.3d 1216 (10th Cir. 2002). The Tenth Circuit affirmed the district court's dismissal

(Continued on following page)

district court ruled: (1) that the tribal court lacked jurisdiction over many of petitioners' claims; (2) that to the extent tribal court jurisdiction existed, respondents had immunity from suit in tribal court with respect to all but one of Riggs' claims; and (3) that in any event, by reason of their interlocutory nature and the mootness of much of the relief awarded, the orders were unenforceable under principles of full faith and credit or comity. *MacArthur I*, 391 F. Supp. 2d at 1054-55. The district court thereafter dismissed petitioners' claims and denied their subsequent motions for reconsideration.

On appeal, the court of appeals held that except as to one individual Health District respondent, Roger Atcitty, a member of the Health District board of trustees and a Navajo, the Navajo tribal court lacked jurisdiction of respondents under the principles articulated in *Montana v. United States,* 450 U.S. 544 (1981). Moreover, the court of appeals held that as to respondent Atcitty, although tribal court jurisdiction arguably existed because he was a tribal member, it declined to enforce the orders against Atcitty on multiple grounds, including the amorphous and un-liquidated nature of the relief ordered, the

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of the case as against two parties, Farmers Insurance, the Health District's insurer, and Dennis Ickes, counsel for the Health District and the County in tribal court. *Id.* at 1225. In one of its final orders, the tribal court had added Farmers and Ickes as defendants and declared them bound to the relief previously ordered even though they had not been parties at the time of the preliminary injunction hearing or when the initial orders were entered.

mootness of some of the relief granted, the fact that Atcitty was named not because of his status as a tribal member but as a result of his Health District board membership, and the minor role played by Atcitty in petitioners' allegations. *MacArthur II,* 497 F.3d at 1076; P. App. at 35a. The court of appeals reversed the district court's finding that tribal court jurisdiction existed as to some of the claims, vacated the district court's issuance of a declaratory judgment that the Navajo Nation possessed civil jurisdiction over certain of petitioners' claims, and affirmed the district court's judgment refusing to enforce the tribal court's orders.

REASONS FOR DENYING THE PETITION

As Supreme Court Rule 10 states, a petition for writ of certiorari should only be granted for compelling reasons. As discussed below, petitioners fail to present any compelling reason for granting a writ. This Court has repeatedly spoken to the issues raised by this case, and the court of appeals correctly applied this Court's existing precedent in reaching its result. Petitioners cannot point to any split between the various courts of appeal on the issues presented, nor can they show that the court of appeals acted outside of its jurisdiction. Petitioners have failed to demonstrate any error in the court of appeals' decision and the petition for certiorari should be denied.

I. THE COURT OF APPEALS CORRECTLY APPLIED EXISTING PRECEDENT IN HOLDING THAT THE NAVAJO TRIBAL COURT LACKED JURISDICTION AND IN REFUSING TO ENFORCE ITS ORDERS

The court of appeals properly found that, with one possible exception, the Navajo tribal court lacked jurisdiction over petitioners' claims, and therefore, correctly declined enforcement of the tribal court's orders. In determining that the tribal court lacked subject matter jurisdiction over petitioners' claims, the court of appeals followed established law from this Court, including *Montana v. United States,* 450 U.S. 544 (1981) and its progeny, *Strate v. A-1 Contractors,* 520 U.S. 438 (1997), *Atkinson Trading Co. v. Shirley,* 532 U.S. 645 (2001) and *Nevada v. Hicks,* 533 U.S. 353 (2001). Petitioners do not challenge how the court of appeals applied *Montana* to this case, but instead argue that *Montana* and this Court's subsequent cases addressing tribal court jurisdiction were wrongly decided and/or have been superceded by Congressional or Executive Branch acts. As set forth more specifically below, petitioners' arguments provide no basis for certiorari.

II. PETITIONERS HAVE FAILED TO ARTICULATE ANY LEGITIMATE REASON FOR GRANTING CERTIORARI

A. The Court of Appeals' Decision Does Not Conflict With Other Circuits or With Itself

Petitioners suggest that certiorari should be granted because the court of appeals' decision creates "inter-circuit conflicts in giving federally recognized U.S. Indian Treaty Nation Courts comity or full faith and credit." Petition at 26. However, in its decision, the court of appeals noted that the Tenth Circuit has not yet determined whether a tribal court's judgment is entitled to preclusive effect under the Full Faith and Credit Clause or as a matter of comity, and in addition, found that resolution of that issue was unnecessary because only final judgments can be enforced as a matter of full faith and credit, not unliquidated and non-final orders like those at issue here. *MacArthur*, 497 F.3d at 1065-66; P. App. at 14a. Given that the court of appeals declined to reach the issue of whether tribal court judgments are enforceable as a matter of full faith and credit, its decision cannot have created a circuit split on that issue.

Petitioners next suggest that certiorari is appropriate because the court of appeals' decision conflicts with a later case from another Tenth Circuit panel, *Minor Electric, Inc. v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007). As an initial matter, only conflicts among circuits – not inter-circuit conflicts – provide a basis for granting certiorari. Moreover,

petitioners misread *Minor*. In *Minor*, suit was brought against the Muscogee (Creek) Nation. The court of appeals acknowledged that it had federal question jurisdiction to resolve issues regarding the scope of tribal court jurisdiction, but held that such jurisdiction did not negate the Tribe's immunity from suit. Here, unlike *Minor*, neither a tribe, nor any agency or division thereof, is a party. Thus, *Minor's* holding does not conflict with the outcome in this case.

B. The Court of Appeals Did Not Act Outside Its Jurisdiction

Petitioners argue that certiorari is appropriate because the court of appeals exceeded its jurisdiction. Petitioners assert that the federal courts have jurisdiction to enforce any tribal court judgment brought to their door, but they lack jurisdiction or authority to review a tribal court's jurisdiction or to refuse enforcement. Petition at 13-14. Petitioners contend that laws and/or policies enacted by Congress and the Executive Branch have restored to tribal courts unlimited civil jurisdiction over all within their borders, and eliminated federal court jurisdiction to review tribal court jurisdiction, overruling the principles set forth in *Montana v. United States* and its progeny regarding the scope of tribal sovereignty. However, as in the court of appeals, petitioners have failed to provide any legitimate authority for their position, as none of the treaties, statutes or Executive agreements or contracts on which they rely say

anything specific about tribal court jurisdiction or suggest that *Montana* was incorrectly decided. Moreover, as the court of appeals noted, many of the sources on which petitioners rely predate *Montana*, and thus provide no basis for overturning that decision. Petitioners' view simply misapprehends the nature of federal court jurisdiction. A tribal court's authority to hear a claim against a non-Indian – a question inherent in the decision whether to enforce a tribal court order – is a matter of federal law over which federal courts have subject matter jurisdiction pursuant to 28 U.S.C. § 1331. *See MacArthur II*, 497 F.3d at 1066; P. App. at 14a-15a.

C. The Court of Appeals' Decision and the Petition Do Not Raise Important Questions of Federal Law That Need Be Settled by this Court

The court of appeals' decision does not involve important questions of federal law that need to be settled by this Court. Although petitioners seek to characterize their petition as raising issues of first impression, Petition at i, 9, 12, as noted above, their argument is not that the issue of tribal court jurisdiction presented here has not been addressed, but that this Court has wrongly decided the issue on previous occasions. Petition at 26-31. Petitioners, however, provide no convincing authority for their arguments.

CONCLUSION

For the reasons set forth above, the petition must be denied.

Respectfully submitted,
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